

Minutes of the Board of Adjustment meeting held on Monday, May 10, 2010, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Joyce McStotts, Chair
Jonathan Russell, Vice-Chair
Rosi Haidenthaller
Roger Ishino
Ray Christensen, Senior Planner
Tim Tingey, Community & Economic Development Director
G.L. Critchfield
Citizens

There was a staff review meeting held where the Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

APPROVAL OF MINUTES

Jonathan Russell made a motion to approve the minutes from April 12, 2010 as written. Rosi Haidenthaller seconded the motion.

Call vote recorded by Ray Christensen.

A Ms. McStotts
A Mr. Russell
A Mr. Ishino
A Ms. Haidenthaller

Motion passed 4-0.

Ms. McStotts explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

CONFLICT OF INTEREST

There were no conflicts of interest pertaining to these agenda items.

CASE #1403 – A-CORE CONCRETE CUTTING, INC. – 5395 S. Riley Lane, Project #10-147

David Heath was the applicant present to represent this request. Tim Tingey reviewed the location and request for a variance for a commercial building setback from a residential zone and also a variance for landscaping adjacent to a residential zone. Mr. Tingey stated that this property is located in the M-G-C zone and is adjacent to a residential zone. He said that Murray City Code Section 17.152.040 requires a minimum 30 foot building setback from residential zoning district boundaries and Section 17.152.100 C requires a minimum 10 foot wide landscape buffer between properties zoned M-G-C and abutting residential zones. He stated that that the building was approved in 1974 by the City Commission with a 1 foot setback, which was allowed by the ordinance at that time. Mr. Tingey stated that since 1974, the building has expanded. He said that when a variance is requested the ordinance and state standards must be addressed and that there must be special circumstances attached to the property. He stated that this property is quite large and adjacent to residential

properties, which makes it important to provide a buffer. Mr. Tingey stated that staff has not identified any unique or special circumstances related to this property. He said that there is property available in other areas that would provide the setback requirement. He stated that staff is recommending denial of the variance request.

David Heath stated that in 2006 he was approached by the Mayor of Murray City with a request to relocate because the city wanted to build a hotel near his property. He said that the deal never went through. Mr. Heath stated that structure in question has a canopy as a cover and is similar to a lean-to or carport. He said there are items stored under the canopy. He said there is no work done in this storage area. Mr. Ishino asked if there is any maintenance performed on the equipment that is stored there. Mr. Heath responded that there is not and stated that all work is performed inside the building. Mr. Russell asked what the hardship is in conforming to the standards. Mr. Heath responded that he just needs a place to store equipment out of the weather and that this started when the city wanted to buy his property three years ago. He said that he has applied for a permit to build a new office building and shop and he would like a variance granted until that project is completed. Mr. Russell stated that a variance is not temporary and asked for clarification on how the city's previous interest in the property is a factor in the variance request. Mr. Heath responded that it didn't make sense for him to build a new structure for storage if he was going to be moving soon. Ms. McStotts asked if he was still planning on moving. Mr. Heath responded that now he is planning on constructing a new building on the same property. He said that eventually he will take down the lean-to but the existing building will stay. He stated that the lean-to is not causing any problems for anyone and that a number of neighbors that have similar structures near his fence.

Ms. McStotts opened the meeting for public comments.

Rex Masters, 182 West American Avenue, lives directly behind this property. He said that this is not just a canopy, that it is a structure that has four walls. He said that today he could hear pounding and welding for six hours inside of this structure, and that there is work being done inside there every day. Mr. Masters stated that he is a member of the clergy and would not lie about this situation. He said that he approached A-Core when the structure was initially built to see if they had obtained a building permit but was threatened by their safety officer, Chris, to not cause any problems for them. He stated that he is tired of having pieces of concrete thrown into his yard and hopes that the Board takes this issue seriously.

Jerry Nichols, 190 West American Avenue, stated that the existing building at this location occasionally emits fumes and that a portion of the masonry fence was built on his property. He said that he does not consider A-Core a good neighbor and that they should comply with the landscaping and setback rules because there is plenty of room at this site to do so.

Cheryl Lillywhite, 174 West American Avenue, stated that there is pounding going on all day long. She said that she hasn't planted a garden because of all the smoke emitted from the building. She asked why the exhaust is vented out the back of the building instead of through the roof.

Bonnie Nichols, 190 West American Avenue, stated that she moved into her home in 1997. She said that the fumes from the building smell like paint and that the trees in her yard that are near the vent have died. She stated that she has also heard pounding during the day. Ms. Nichols stated that there is an old well on the A-Core property that they have capped off, but puddles of water accumulate around the well and they have taken dirt from her property to fill it in. She said that she wants to be neighborly but has not been successful in trying to talk with anyone at this business.

There were no additional comments from the public related to this item.

Mr. Heath stated that he is sorry the neighbors have had hardships. He said that the building they are referring to is not the issue and that the variance request relates to the lean-to. He said that the lean-to has a back side, which will help prevent noise. Ms. McStotts stated that Mr. Heath said previously that nobody worked in the lean-to. Mr. Heath responded that nobody does, but the noise the neighbors are hearing comes from the shop that is near that wall. Mr. Russell asked when the lean-to was built. Mr. Heath responded that it was put up in 2007.

Rosi Haidenthaller stated that although the landowner has future plans for the property, those changes do not exist today and cannot be considered in this request. She said that this is a difficult request because the Board does not like to make people tear down structures that are skillfully built, but it should have been done with the proper permit and forethought. Ms. Haidenthaller made a motion to deny the variance based on failure to meet criteria for a variance and the findings of fact outlined by staff. Seconded by Jonathan Russell.

Call vote recorded by Ray Christensen.

A Ms. McStotts

A Mr. Russell

A Mr. Ishino

A Ms. Haidenthaller

Motion passed 4-0.

Ms. Haidenthaller made a motion to approve the Findings of Fact as outlined by staff. Seconded by Mr. Russell.

A voice vote was made. The motion passed 4-0.

CASE #1404 – SKIN DEEP – 5 East 4800 South, Project #10-148

Rick Todd, 3439 South Greenmont Circle, was present to represent this request. Tim Tingey reviewed the location and request for a landscaping variance. He said that the property is located in the C-D-C zone. He stated that the structure was built in the 1960's and housed a tavern and some offices. He said that there haven't been any major additions to the building since that time. Mr. Tingey stated that at the time of construction some landscaping was done, but that the landscape requirements were different then. He said that the applicant has applied for a Conditional Use Permit to locate a business at this site which requires the property to be brought into compliance. He said that there is a requirement of 10 percent of landscaping within the site as well as

a 10 foot landscape buffer along 4800 South. Mr. Tingey stated that the size of the site makes it difficult to install landscape without removing parking. He said that there is currently a small area of landscaping along 4800 South that contains some trees. He stated that according to state law and city ordinances, the literal enforcement of land use would cause unreasonable hardship, which cannot relate to financial means. He stated that the unique characteristics of the property relate to its depth. Mr. Tingey stated that the properties surrounding this site have greater depth while this particular parcel is very limited in its configuration. He said that there are non-conforming properties related to landscaping throughout this area, but most have the space for landscaping if they were to seek a conditional use permit. He stated that the spirit of the land use ordinance includes a key element pertaining to parking. He said that with the loss of the parking for landscaping would not enhance the area as there is a need for parking. Mr. Tingey stated that based on the special circumstances related to the depth of the property in relation to other properties, staff is recommending approval of the variance. Ms. McStotts asked about the buildings located behind this property. Mr. Tingey responded that there is an apartment complex there which is a separate property.

Rick Todd stated that he has been a tattoo artist for 20 years, and that this business would bring people into Murray. He said that he knows all of the business owners in the area and that they have encouraged him to open a business at this site. He stated that the landscaping currently in place is mature landscaping. He said that he has secured overflow parking from the businesses to the west and south. Mr. Todd stated that his business hours are different from those of the tavern, which makes it easier to share parking. Mr. Ishino asked what the parking requirements are for this business. Mr. Todd stated that he needs two spaces per eight hours because he works by appointment only and can only work with one customer at a time. He said that he does not have any employees. Tim Tingey stated that the requirement for this use is four parking stalls. He said that there are some other office uses at this site in addition to the tavern. Ms. McStotts clarified that once a variance is granted it stays with the property.

Ms. McStotts opened the meeting for public comments.

Robert Gill, 4785 South Boxelder Street, stated that he understood this business has not been approved. He stated that he is opposed to this business because there are three bars located in the area and that by opening a tattoo parlor there it will further downgrade the property. He said that the bars are noisy and that beer bottles are broken in the street. Mr. Russell stated that allowing a tattoo parlor to locate in this area is left up to the Planning Commission, and that the Board of Adjustment only can decide on granting a variance for landscaping. Tim Tingey stated that the Planning Commission did review this item last Thursday night and that a Conditional Use Permit was granted.

Mr. Russell asked what conditional means in this context. Mr. Tingey responded that each zoning area has uses that are allowed outright and others that are conditional uses, which receive further scrutiny from both staff and the Planning Commission. He said that conditions can be placed on the property to reduce significant impacts on adjacent properties and businesses.

There were no additional public comments related to this item.

Jonathan Russell stated that the role of the Board is to review whether a certain application meets criteria for a variance, and preference for any particular type of business is not a factor. Mr. Russell made a motion to approve the variance as recommended by staff. Seconded by Ms. Haidenthaller.

Call vote recorded by Ray Christensen.

A Ms. McStotts
A Mr. Russell
A Mr. Ishino
A Ms. Haidenthaller

Motion passed 4-0.

Mr. Russell made a motion to approve the Findings of Fact as outlined by staff.
Seconded by Mr. Ishino.

A voice vote was made. The motion passed 4-0.

CASE #1405 – JUSTIN BOARDMAN – 5138 South 1000 East, Project #10-149

Justin Boardman was the applicant present to represent this application. Ray Christensen reviewed the location and request for a side yard setback variance for the property located at 5138 South 1000 East. He said that the property is located within the R-1-8 zone and the structure is a single family dwelling. Mr. Christensen said that the applicant would like to add a garage to the house within 3 feet of the side yard property boundary. He stated that Murray City Code Section 17.100.080 (B) requires a minimum side yard width of 8 feet. The minimum total width of the two required side yards is 20 feet. The applicant is proposing a setback of 3 feet from the south property line with a total setback width of 15 feet for both side yards. The north side of the property has an existing 12 foot side yard setback. Mr. Christensen stated that each individual case must be reviewed on its own merits.

Ms. McStotts asked if there is currently a total of 20 feet on the side yards. Mr. Christensen stated that right now the property is in compliance. Ms. Haidenthaller stated that there is currently a single car carport on one side.

Mr. Boardman, 5138 South 1000 East, stated that he just received a letter from some of his neighbors yesterday that are in favor of the variance being granted. The letter was submitted to staff. He said that the property was a rental for 15 years and has required substantial cleanup. He stated that he has read the staff report and understands the recommendation for denial. Mr. Boardman stated that the neighborhood was annexed into Murray City from the county, and a number of properties have garages that are detached and set back. He said that an attached garage will look better and be an improvement to the neighborhood. He stated that a number of lots have different configurations and the side yards vary so the neighborhood is not consistent. Ms. McStott asked if there is any hardship related to this request besides financial. Mr. Boardman responded that he likes to rebuild furniture as a side job and would like a garage for that purpose. He stated that his job is stressful and that rebuilding furniture is relaxing for him and important to his mental well-being.

Mr. Russell stated that Mr. Boardman is proposing a 26 foot wide garage. He asked the standard width of a garage. Mr. Boardman responded that he's not sure, but that one of the City Planners indicated that 21 feet is large enough for two cars, and he wants to have enough room for a workbench. Mr. Russell asked if a 23 foot wide garage would be sufficient. Ms. Haidenthaller asked if the landscaping on the plan is existing or proposed. Mr. Boardman responded that it is proposed landscaping. Ms. Haidenthaller stated that another variance that was referred to in the application is different from this

one in that there was an easement on the property and an addition to the back of the home. She said that each property must be evaluated on its own merit. Mr. Ishino asked if the existing carport would stay as it is. Mr. Boardman responded that the carport would come down and the garage would be built in its place. He said that the garage would tie into the roofline. Mr. Boardman stated that he has talked to a number of neighbors that are supportive. Mr. Ishino asked if a 21 foot garage, which would be in compliance, would be sufficient. Mr. Boardman responded that it would be tight to fit cars and his woodworking materials into a garage that size. Mr. Ishino asked if building the garage deeper would be a solution. Mr. Boardman responded that it could be a solution but that there are some existing, mature trees that would have to come down in the back yard. Ms. Haidenthaller asked how many feet are between Mr. Boardman's home and the Spencer's property line. He responded that it is probably 8 to 10 feet on that side.

Annika Searle, 5138 South 1000 East, stated that reducing the size of the garage would result in no room for stairs leading from the garage into the house. She said that Justin has to park his police car in the garage and that they would like to build it big enough that her car would fit as well.

There were no additional comments from the public pertaining to this item.

Ms. McStotts stated that a variance is permanent and stays with the property. She said that although Mr. Boardman gets along well with his neighbors, future residents may not and having the garage too close to the property line could create a problem. Mr. Russell stated that he is disappointed that the Board cannot be more helpful in this situation as he would like Mr. Boardman to be able to fully utilize the property. Ms. Haidenthaller stated that the setbacks are important for fire separation and easy access to the property. Mr. Ishino asked why a 21 foot garage would not accommodate stairs into the home. Mr. Boardman stated that the area where the stairs would logically be placed would take up 3 to 4 feet of the garage width. Ms. Haidenthaller stated that she also lives in a Murray neighborhood, and her garage is detached because that is the only way it would fit on her property.

Rosi Haidenthaller made a motion to deny the variance according to the established criteria, including the lack of hardship, respect of fire separation and consideration of other options for the homeowner. Seconded by Roger Ishino.

Call vote recorded by Ray Christensen.

A Ms. McStotts

N Mr. Russell

A Mr. Ishino

A Ms. Haidenthaller

Motion passed 3-1.

Ms. Haidenthaller made a motion to approve the Findings of Fact as outlined by staff. Seconded by Mr. Ishino.

A voice vote was made. The motion passed 4-0.

CASE #1406 – DISCOUNT TIRE – 6150 and 6180 South Vine Way, Project #10-150

Howard Hamann was the applicant present to represent this request. Ray Christensen reviewed the location and request for a front yard setback variance for an existing building that is located in the C-D-C zone. He said there are currently two businesses operating at this location. He said that Discount Tire plans to acquire the other business and combine the property into a single site for their store. Mr. Christensen stated that the existing buildings are legal non-conforming with the current setback requirements, which is a minimum of 20 feet in this zone. He said that currently there is a 10 foot setback from the front boundary line. He stated that there are some constraints in meeting parking and landscaping requirements and that this property is narrow on the north end and wider on the south. He stated that there is a 10 foot landscape buffer required to the west, which is adjacent to a residential zone, in addition to a 10 foot landscape buffer along the front. He said that there is parking along the north and south sides. Mr. Christensen reviewed the plans to combine the two buildings and the area for the new showroom. He stated that the shape and depth of the property is unique. He said that staff is recommending approval of the variance.

Ms. McStotts asked what steps are required to combine the two properties into one. Mr. Christensen responded that there are building code requirements that need to be met. Ms. McStotts asked if the properties will be combined legally. Mr. Christensen responded that they should. Ms. Haidenthaller asked if the landscape on the west side of the property will be in compliance. Mr. Christensen stated that the plan shows the 10 foot requirement will be met along the west side, with landscaping along both sides of the existing wall. He said that the variance request only applies to the building setback. Ms. Haidenthaller clarified that the building will only be 10 feet back near the narrow portion by the road.

Howard Hamann, 1300 East 6600 South, stated that a hardship exists because the building was constructed in 1987 and met the 10 foot setback standard at that time. He said that with the acquisition of the new building, he would have to take 10 feet off of the existing Discount Tire store in order to meet the current setback standards. He said that structurally this cannot be done and that the variance is necessary to make combining the buildings possible. He stated that the requirement is for 10 percent of the site to be landscaped and that their current plan has 17 percent landscaped. Ms. Haidenthaller asked if the entrance location to the building is going to change. Mr. Hamann responded that the entrance is currently on the south end and will be moved to the north end where the glass business currently exists.

There were no public comments related to this agenda item.

Roger Ishino made a motion to approve the variance for Discount Tire. Seconded by Rosi Haidenthaller. Ms. Haidenthaller stated that the approval is based on the building being legal while in Salt Lake County and becoming non-conforming when it was annexed into Murray City. She said that the circumstances are particular to the shape of the property.

Call vote recorded by Ray Christensen.

A Ms. McStotts

Board of Adjustment Meeting

May 10, 2010

Page 8

A Mr. Russell

A Mr. Ishino

A Ms. Haidenthaller

Motion passed 4-0.

Mr. Russell made a motion to accept the Findings of Fact as outlined by staff. Seconded by Mr. Ishino.

A voice vote was made. The motion passed 4-0.

Meeting adjourned.

Tim Tingey
Director of Community & Economic Development